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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,306	12/16/2003	Robert Haines Turner	9134R2	5964

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT PAPER NUMBER

1771

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/737,306	<b>Applicant(s)</b> TURNER ET AL.	
	<b>Examiner</b> Jenna-Leigh Befumo	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/06, 5/06, 6/06, 6/06</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 22, 2006 has been entered.

### ***Response to Amendment***

2. The Amendment submitted on May 22, 2006, has been entered. Claims 1, 11, 16, 17, 21, 24, and 27 have been amended. Therefore, the pending claims are 1 – 27.

3. The objection to claim 16 is withdrawn due to the amendment.

### ***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1 – 5, 8 – 12, 15 – 21, and 23 – 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Provost et al. (2004/0157036) for the reasons of record.

6. Claims 1 – 5, 10 – 12, 16 – 21, and 23 – 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Tranfield (3,684,284) for the reasons of record.

7. Claims 1 – 6, 8, 10 – 13, and 15 – 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Sorimachi et al. (5,508,080) for the reasons of record.

### ***Claim Rejections - 35 USC § 103***

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8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorimachi et al. in view of Kotek et al. (6,120,718) for the reasons of record.

***Double Patenting***

10. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3 – 15 of copending Application No. 10/737,235 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 10/737,430 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 6 – 12, and 14 – 30 of copending Application No. 10/737,307 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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13. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 44 of copending Application No. 10/737,640 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 25 of copending Application No. 11/156,020. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a fibrous article comprising similar longitudinal orientations of fibers in discrete areas in one layer with similar dependent claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Response to Arguments***

15. Applicant's arguments filed May 22, 2006 have been fully considered but they are not persuasive. The applicant argues that the film layer taught by Provost et al. is not required in the claimed invention (response, page 8). However, the claim does not specifically exclude a film layer and uses the term comprising, which means additional components and layers can be included in the invention. Thus, the composite taught by Provost et al. still reads on the claimed invention even though it includes a film layer.

16. Further, the applicant argues that Provost et al. fails to teach a discontinuity exhibiting a linear orientation and a discontinuity defining a longitudinal axis (response, pages 8 – 10).

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However, the tufts taught by Provost et al. have fibers aligned in the vertical direction, producing the required linear orientation.

Further, the applicant points to the fact that the tuft is formed by punching a symmetrical depression through the surface with a circular needle, as opposed to the rectangular shaped tufts formed by the present invention. However, the limitation only requires a linear orientation in the longitudinal axis. The claim does not require that the linear orientation be a certain length or that the linear orientation in the longitudinal axis is greater than the orientation in any other direction. Hence, the opening regardless of shape must have a measurable length along the longitudinal axis of the fabric. Therefore, as long as the opening is wider than a point, a circular shaped opening is not excluded by the present limitation. Particularly, the circular opening, taught by Provost, produces an opening having a definite length in the longitudinal axis of the fabric. Therefore, the rejection is maintained.

17. The applicant also argues that Provost fails to teach that the tufts are formed from fibers which are integral portions that extend from the first precursor web (response, page 10 – 11). However, the figures (2A – 2D) clearly show that the fibers of nonwoven web (which corresponds to the applicant's first precursor web) are pushed through the carrier layer (which corresponds to the applicant's second precursor web) to form a tuft extending from the surface of the fabric, that is still connected, and integral to the nonwoven web. The figures are part of the patent and sufficient evidence to teach the claimed limitation. Thus, the rejection is maintained.

18. Finally, the applicant argues that Provost et al. fails to teach the material is a topsheet for a disposable absorbent article or an absorbent core for a disposable absorbent article (response, pages 11 – 12). However, these limitations are considered to be intended use and not given

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patentable weight at this time. The claims only positively recite structure of the two layer composite material which is taught by Provost et al. Further, it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the rejections are maintained.

19. The applicant argues that the base layer taught by Tranfield is not required in the claimed invention (response, page 13). However, the claim does not specifically exclude a base layer and uses the term comprising, which means additional components and layers can be included in the invention. Thus, the claimed invention is not limited to only a single layer and the composite taught by Tranfield still reads on the claimed invention even though it includes a base layer.

20. Further, the applicant argues that Tranfield fails to teach a discontinuity exhibiting a linear orientation and a discontinuity defining a longitudinal axis (response, pages 13 – 14). However, the tufts taught by Tranfield have fibers aligned in the vertical direction, producing the required linear orientation.

The applicant points to the fact that the tuft is formed by punching a symmetrical depression through the base layer, as opposed to the rectangular shaped tufts formed by the present invention. However, the limitation only requires a linear orientation in the longitudinal axis. The claim does not require that the linear orientation be a certain length or that the linear orientation in the longitudinal axis is greater than the orientation in any other direction. Hence, the opening regardless of shape must have a measurable length along the longitudinal axis of the fabric. Therefore, as long as the opening is wider than a point, a circular shaped opening is not excluded by the present limitation. Particularly, the circular opening, taught by Tranfield,

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produces an opening having a definite length in the longitudinal axis of the fabric. Therefore, the rejection is maintained.

21. Additionally, the applicant argues that the fibers of the tufts are not integral with and extending from the first precursor web (response, page 15). However, Tranfield discloses that the fibers of the nonwoven layer are pushed through the base layer, to form a tuft extending from the surface of the base structure. However, the fibers from the tuft material are not separated from the nonwoven web, but are still connected, and integrally a part of the nonwoven web as shown in Figure 7. Thus, the rejection is maintained.

22. Finally the applicant argues that Tranfield fails to teach that the article is a disposable absorbent article (response, page 10 – 16). As set forth above this recitation in the claim is considered to be intended use. Tranfield teaches all the claimed structural limitations and therefore, anticipates the claim. Further, the fact that the fabric is used as a tennis ball cover does not mean it does not absorb fluid, or that it is not disposable, and can be thrown away after just a few uses. Thus, the rejection is maintained.

23. The applicant argues that the fabric sheet taught by Sorimachi et al. is not required in the claimed invention (response, page 17). However, the claim does not specifically exclude a fabric sheet and uses the term comprising, which means additional components and layers can be included in the invention. Thus, the claimed invention is not limited to only a single layer and the composite taught by Sorimachi et al. still reads on the claimed invention even though it includes a fabric sheet.

24. Further, the applicant argues that Sorimachi et al. fails to teach a discontinuity exhibiting a linear orientation and a discontinuity defining a longitudinal axis (response, pages 17 – 18).



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However, the tufts taught by Sorimachi et al. have fibers aligned in the vertical direction, producing the required linear orientation.

The applicant points to the fact that the tuft is formed by punching a symmetrical depression through the base layer, as opposed to the rectangular shaped tufts formed by the present invention. However, the limitation only requires a linear orientation in the longitudinal axis. The claim does not require that the linear orientation be a certain length or that the linear orientation in the longitudinal axis is greater than the orientation in any other direction. Hence, the opening regardless of shape must have a measurable length along the longitudinal axis of the fabric. Therefore, as long as the opening is wider than a point, a circular shaped opening is not excluded by the present limitation. Particularly, the circular opening, taught by Sorimachi et al., produces an opening having a definite length in the longitudinal axis of the fabric. Therefore, the rejection is maintained.

25. Additionally, the applicant argues that the fibers of the tufts are not integral with and extending from the first precursor web (response, pages 18 - 19). However, Sorimachi et al. discloses that the fibers of the nonwoven layer are pushed through the base layer, to form a tuft extending from the surface of the base structure. However, the fibers from the tuft material are still connected to, and thus integral with, the nonwoven layer. Thus, the rejection is maintained.

26. Further, the applicant argues that Sorimachi et al. fails to teach that the article is a topsheet or a disposable absorbent article (response, page 19 – 20). As set forth above this recitation in the claim is considered to be intended use. Sorimachi et al. teaches all the claimed structural limitations and therefore, anticipates the claim. Further, the material taught by

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Sorimachi et al. is capable of absorbing fluid and could be thrown away after a few uses. Thus, the rejection is maintained.


27. Finally, the applicant argues, with regards to the rejections based on Sorimachi et al. and Kotek et al., that Sorimachi et al. fails to teach a linear orientation in the longitudinal direction and fibers which are integral from the first precursor web (response, pages 21 – 22). However, as set forth above, Sorimachi et al. discloses these features. Therefore, the rejection is maintained.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Aug 7, 2006